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OFFICE OF PETITIONS

In re Application of
Gallops, et al.
Application No. 10/687,950
Filed: October 17, 2003
Attorney Docket No. 1405-342

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DECISION ON PETITION

This is a decision on the petition filed December 15, 2003, requesting that Figures 10 and 11 of the drawings be considered as part of the disclosure of the originally filed application, or alternatively, that the figures be incorporated by reference.

The petition is **DISMISSED**.

The application was filed on October 17, 2003. However, on December 8, 2003, the Office mailed a "Notice of Omitted Item(s) in a Nonprovisional Application", stating that the application had been accorded a filing date of October 17, 2003, and advising applicants that the drawing of Figures 10 and 11 described in the specification appeared to have been omitted.

In response, the present petition was filed. Petitioner submits that Figures 10 and 11 were filed with the application on October 17, 2003, as evidenced by an unstamped postcard receipt, itemizing 10 sheets of drawings. In addition, petitioner has included an "Affidavit of Charles J. Meyer" and an "Affidavit of Danielle Sneed", attesting that Figures 10 and 11 were included in the envelope and filed together with the rest of the application papers on October 17, 2003. Alternatively, petitioner requests that Figures 10 and 10 be incorporated into the application based upon the incorporation by reference statement contained in Box 18 of the application transmittal letter.

Regarding petitioner's postcard receipt, it is true that a postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of

receipt in the Office of all the items listed thereon on the date stamped thereon by the Office. See MPEP 503. However, petitioners have not submitted a proper return postcard showing that the application, including Figures 10 and 11, was filed on October 17, 2003, as the postcard receipt submitted on petition lacks a USPTO date stamp.

With regards to petitioner's affidavits, the affidavits relied on contain the declarants' recall of routine events which occurred almost two months earlier and are not more persuasive than the record of what was filed as shown by the official file.

Alternatively, petitioners seek to incorporate Figures 10 and 11 into the application. MPEP 201.06(c) states that:

. . . an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The statement may appear in the specification or in the application transmittal letter. The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), **without the need for a petition** (emphasis added).


Obviously, in view of the incorporation by reference of the prior application, the drawings of Figures 10 and 11 are not new matter if they were a part of the disclosure of the prior application.

Applicants should resubmit Figures 10 and 11 as a preliminary amendment for consideration by the examiner prior to the first Office action on the merits.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 17, 2003, including an indication in Office records that 8 sheets of drawings were present on filing.

Telephone inquiries specific to this matter should be directed to the undersigned at 703-305-0272.



 Cliff Congo
Petitions Attorney
Office of Petitions

¹ "Since different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects." 37 CFR 1.4(c)